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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,365	03/09/2004	Roger Dean Neitzell	066042-9276-04	2254
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MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			EXAMINER PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER
			3724	
DATE MAILED: 06/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,365

Applicant(s)

NEITZELL ET AL.

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Detailed Action

Claims Objection

Claims 6 and 15 are objected to because of the following informalities:

In claim 6 and 15, line 3, "an other" should read --the other--.

Appropriate correction is required.

Claims Rejection - 35 U.S.C. 112, second paragraph

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) In claim 1, line 8, "the body axis" lacks clear antecedent basis.

(2) In claim 13, line 5, "the body axis" lacks clear antecedent basis.

(3) In claim 23, line 10, "the body axis" lacks clear antecedent basis.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12-21 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung et al. (U.S. Patent No. 6,364,033) in view of Kishi (U.S. Patent No. 4,522,270).

Hung et al. disclose a power tool (10) adjustable in multiple positions so that the body (14) of the tool and the hand grip (16) of the tool assume a plurality of working positions – generally aligned (see Fig.2), obtuse angle (see Fig.7) and generally perpendicular (see column 4, lines 8-11) to accommodate the use of the tool in a confined working area.

The tool (10) comprises a body (14); a motor (32); a drive mechanism (42); a hand grip (16); a switch assembly or trigger (44); a wiring arrangement (see column 3, lines 32-33); a locking mechanism (106,118) having recesses (118) and a projection (106) engageable in a selective one of the recesses (118); an actuator (108); means (104) for biasing the locking mechanism (106,118) toward a locked condition; a cord (see column 3, lines 18-19) connected to the hand grip (16) substantially as claimed.

The mere difference between Hung et al. and the claimed invention resides in the manner the power tool is adjusted. Specifically, the power tool of Hung et al. is adjusted by pivoting the tool body (14) relative to the hand grip (16) while the claimed invention is adjusted by pivoting the hand grip relative to the body of the tool.

However, adjusting a hand grip relative to a body of a power tool to accommodate the use of the tool in a confined working area is notoriously old and well known in the art as evidenced by Kishi (U.S. Patent No. 4,522,270).

In view of this fact, it would have been obvious to one skilled in the art at the time this invention was made to adjust the power tool of Hung et al. by pivoting the hand grip (16) relative to the body (14) to accommodate the use of the power tool in a confined area.

3. Claims 1, 11, 12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson et al. (U.S. Patent No. 3,028,890) in view of Hung et al. (U.S. Patent No. 6,354,033) and Kishi (U.S. Patent No. 4,22,270).

Atkinson et al. show a power tool comprising a spindle (24), a reciprocating saw blade (15), a body (11,12), a motor (housed in motor housing 11, see column 2, line 55), a drive mechanism (housed in the gear housing 12, see column 2, line 55), and a hand grip (13) substantially as claimed except the power tool of Atkinson et al. is not adjustable.

Hung et al. teach adjusting a power tool (10) in multiple positions so that the body (14) of the tool and the hand grip (16) of the tool assume a plurality of working positions – generally aligned (see Fig.2), obtuse angle (see Fig.7) and generally perpendicular (see column 4, lines 8-11) to accommodate the use of the power tool in a confined area. The power tool (10) comprises a locking mechanism (106,118) for locking and unlocking the hand grip (16) relative to the body (14), and an actuator (108)

for moving the locking mechanism (106,118) between a locked condition and an unlocked condition.

It would have been obvious to one skilled in the art to modify Atkinson et al. by providing the power tool with a locking mechanism and an actuator to enable adjustment of the tool body (11,12) relative to the hand grip (13) to facilitate the use of the power tool in a confined working area as taught by Hung et al.

Atkinson et al. as modified above shows all the claimed structure except for the manner the power tool is adjusted. Specifically, the power tool of Atkinson et al. as modified is adjusted by pivoting the tool body (11,12) relative to the hand grip (13) while the claimed invention is adjusted by pivoting the hand grip relative to the tool body.

However, adjusting a hand grip relative to a body of a power tool to accommodate the use of the tool in a confined working area is notoriously old and well known in the art as evidenced by Kishi (U.S. Patent No. 4,522,270).

In view of this fact, it would have been obvious to one skilled in the art at the time this invention was made to adjust the power tool of Atkinson et al. as modified by pivoting the hand grip (13) relative to the tool body (11,12) to accommodate the use of the power tool in a confined working area.

4. Claims 1, 11, 12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson et al. (U.S. Patent No. 3,028,890) in view of Hung et al. (U.S. Patent No. 6,354,033) and Kishi (U.S. Patent No. 4,22,270).

Atkinson et al. show a power tool comprising a spindle (24), a reciprocating saw blade (15), a body (11,12), a motor (housed in motor housing 11, see column 2, line 55), a drive mechanism (housed in the gear housing 12, see column 2, line 55), and a hand grip (13) substantially as claimed except the housing (which comprises two portions namely, the body portion 11,12 and the hand-grip portion 13) of Atkinson et al. is non-pivotable rather than pivotable.

Hung et al. shows a power tool comprising a pivotable housing having a hand grip (16) and a body (14) pivotable relative to the hand grip (16) to assume a plurality of working positions – generally aligned (see Fig.2), obtuse angle (see Fig.7) and generally perpendicular (see column 4, lines 8-11) to accommodate the use of the power tool in a confined working area. The housing further comprises a locking mechanism (106,118) for locking and unlocking the hand grip (16) relative to the body (14), and an actuator (108) for moving the locking mechanism (106,118) between a locked condition and an unlocked condition.

It would have been obvious to one skilled in the art at the time this invention was made to modify Atkinson et al. by substituting the pivotable housing of Hung et al. for the non-pivotable housing of Atkinson et al. to facilitate the use of the power tool in a confined working area as taught by Hung et al.

Atkinson et al. as modified above shows all the claimed structure except for the manner the power tool is adjusted. Specifically, the power tool of Atkinson et al. as

modified is adjusted by pivoting the tool body relative to the hand grip while the claimed invention is adjusted by pivoting the hand grip relative to the tool body.

However, adjusting a hand grip relative to a body of a power tool to accommodate the use of the tool in a confined working area is notoriously old and well known in the art as evidenced by Kishi (U.S. Patent No. 4,522,270).

In view of this fact, it would have been obvious to one skilled in the art at the time this invention was made to adjust the power tool of Atkinson et al. as modified by pivoting the hand grip relative to the tool body to accommodate the use of the power tool in a confined working area.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 571-273-4511 for proposed amendments.

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H Payer

June 10, 2005

H. Payer

**Hwa-Slu Payer
Primary Examiner**